Jaafar bin Jantan & Ors v Golden Lady (M) Sdn Bhd & Anor

HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO 11-32 OF 1996
ABDUL KADIR MUSA J
14 MAY 1997

Labour Law *— Employment — Termination benefits — Laying off — Jurisdiction of Director General or his designated officer under s 69(1) of the Employment Act 1955 — Whether s 69(1) before amendment gives any power to the D-G or labour officer to question the validity of the dismissal of employee — Whether definition of 'wages' includes termination benefits and lay-off benefits — Employment Act 1955 ss 70(c) & 77(1) — Employment (Termination and Lay-off Benefits) Regulations 1980 reg 13 — Interpretation Act 1967 s 30*

The appellants were employees of the respondents whose factory was burnt down in 1985. Consequently, the appellants were laid off by the respondents. As a result of that, in 1986, the appellants filed their claims for, inter alia, indemnity in lieu of notice and termination benefits in the Labour Court by which a labour officer ruled in favour of the appellants. The respondents appealed against the decision in the High Court at Johor Bahru. The respondent contended as a preliminary issue that the officer had no jurisdiction under s 69(1) of the Employment Act 1955 ('the Act') to award the appellants' claims in respect of indemnity in lieu of notice and termination benefits. The High Court allowed the objections and the appellants appealed to the (then) Supreme Court against the High Court decision. The Supreme Court dismissed the appeal on 15 February 1993. The sealed order of the decision was extracted. On the basis of the wording therein and the relevant extracts of the notes of proceedings, the appellants contended that they were entitled to file afresh the two same claims in the Labour Court after 15 February 1993. It was argued by the respondents, inter alia, that since the two claims were decided on the relevant law then applicable in 1986 and it was held that by that law the Labour Court then had no jurisdiction to entertain them in 1986, it could not therefore be said to have the necessary jurisdiction after 15 February 1993, unless the Act specifically so provides otherwise. The Director-General of Labour ('the D-G') accordingly dismissed the appellants' claims. The appellants appealed.

Held, dismissing the appeal:

The claims made by the appellants could be dealt with by virtue of reg 13 of the Employment (Termination and Lay-off Benefits) Regulations 1980 ('the regulations') in accordance with the procedure provided by s 69(1) of the Act. It has been held that s 69(1) does not give any power to the D-G or labour officer to question the validity of the dismissal of employee. Not being able to 'question the validity of the dismissal of employee' must necessarily be construed as not being able to enquire into and decide any entitlement, if any, consequential to such dismissal. Therefore, the D-G or any of his

designated officers would have no jurisdiction to hear and decide on the issues of employment entitlements as claimed by the appellants under s 69(1) of the Act.

Moreover, it is clear that s 69(1) of the Act before it was amended by the Employment (Amendment) Act 1989 spoke only of any dispute as to the payment of wages due to any dismissal or retrenchment of any employee and not to other benefits such as claimed by the appellants. Even after the amendment, by s 2 of the Act, the definition of wages is maintained as basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service but does not include termination benefits and lay-off benefits. Therefore, these benefits did not come within the ambit of the definition of 'wages' in the context of the Act.

Further, the amendment affects the 'substantive rights' of the parties concerned and not just pure procedural amendment. In that context, only if the said amendment took away those rights by way procedural amendment then — unless it specifically provides so — such rights cannot be taken away but not otherwise. Therefore, s 30 of the Interpretation Act 1967 does not give the appellants right to claim those benefits which by law then were not substantially made available to them (see pp 215C, 216A–H and 217A–C); *PP v Dato' Hj Harun bin Hj Idris* [1977] 1 MLJ 14, *Nylex (M) Sdn Bhd v Alias bin Chek* [1985] 1 CLJ 185, *Rajaretnam all Palaniandy v Amalgamated Properties & Industries* [1988] 2 MLJ 383 and *Indo Malaysia Engineering Co Bhd v Muniandy Regasamy & Ors* [1990] 3 MLJ 301 followed.

[Bahasa Malaysia summary

Perayu-perayu merupakan pekerja penentang-penentang yang kilangnya telah terbakar pada tahun 1985. Berikutnya, perayu-perayu telah digantung kerja oleh penentang-penentang. Akibatnya, pada tahun 1986, perayu-perayu memfailkan tuntutan untuk, antara lain, tanggung rugi sebagai ganti notis dan faedah pemberhentian di Mahkamah Buruh yang mana seorang pegawai buruh telah membuat keputusan yang memihak kepada perayu-perayu. Penentang-penentang merayu terhadap keputusan di Mahkamah Tinggi Johor Bahru. Penentang menghujahkan sebagai isu permulaan bahawa pegawai tersebut tidak mempunyai bidang kuasa di bawah s 69(1) Akta Pekerjaan 1955 ('Akta tersebut') untuk mengawardkan tuntutan perayu-perayu berkenaan dengan tanggung rugi sebagai ganti notis dan faedah pemberhentian. Mahkamah Tinggi membenarkan bantahan dan perayu-perayu membuat rayuan kepada Mahkamah Agung (pada masa itu) terhadap keputusan Mahkamah Tinggi. Mahkamah Agung telah menolak rayuan pada 15 Februari 1993. Perintah bermeterai keputusan itu dikeluarkan. Berdasarkan penyusunan kata dalamnya dan petikan nota prosiding yang relevan, perayu-perayu menghujahkan bahawa mereka berhak memfailkan kedua-dua tuntutan yang sama sekali lagi di Mahkamah Buruh selepas 15 Februari 1993. Adalah dihujahkan oleh penentang-penentang,

A antara lain, bahawa oleh kerana dua tuntutan itu diputuskan atas undang-undang relevan yang terpakai pada tahun 1986 dan ia diputuskan bahawa melalui undang-undang itu Mahkamah Buruh tidak mempunyai bidang kuasa untuk melayannya pada tahun 1986, dengan itu ia tidak boleh dikatakan mempunyai bidang kuasa yang perlu selepas 15 Februari 1993, melainkan Akta tersebut B memperuntukkan sebaliknya secara spesifik. Ketua Pengarah Buruh ('KPB') telah dengan wajarnya menolak tuntutan perayu-perayu. Perayu-perayu membuat rayuan.

Diputuskan, menolak rayuan:

C Tuntutan yang dibuat oleh perayu-perayu boleh diuruskan disebabkan peraturan 13 Peraturan-Peraturan Pekerjaan (Faedah-Faedah Pemberhentian dan Pemberhentian Kerja Sementara) 1980 ('peraturan tersebut') menurut prosedur yang diperuntukkan oleh s 69(1) Akta tersebut. Telah diputuskan bahawa s 69(1) tidak memberi D sebarang kuasa kepada KPB atau pegawai buruh untuk mempersoalkan kesahan pemecatan pekerja. Tidak dapat 'mempersoalkan kesahan pemecatan pekerja' mestilah ditafsirkan sebagai tidak dapat menyiasat dan memutuskan sebarang hak, jika ada, yang berbangkit atas pemecatan demikian. Maka, KPB atau sesiapa daripada pegawai-pegawai yang dilantik tidak akan mempunyai bidang kuasa untuk mendengar dan E memutuskan isu hak pekerjaan seperti yang dituntut oleh perayu-perayu di bawah s 69(1) Akta tersebut.

Tambahan pula, adalah jelas bahawa s 69(1) Akta tersebut sebelum ia dipinda oleh Akta Pekerjaan (Pindaan) 1989 hanya menyebut tentang mana-mana pertikaian mengenai bayaran gaji akibat pemecatan atau F pengurangan pekerja mana-mana pekerja dan bukan kepada manfaat lain seperti yang dituntut oleh perayu-perayu. Walaupun selepas pindaan, melalui s 2 Akta tersebut, takrifan gaji dikekalkan sebagai gaji asas dan semua bayaran lain berbentuk tunai yang harus dibayar kepada seorang pekerja untuk kerja yang dibuat berkenaan dengan kontrak perkhidmatannya tetapi tidak termasuk faedah pemberhentian dan faedah G pemberhentian kerja sementara. Oleh itu, manfaat-manfaat ini tidak diliputi oleh lingkungan takrifan 'gaji' dalam konteks Akta tersebut.

Selanjutnya, pindaan menjejaskan 'hak substantif' pihak-pihak yang terlibat dan bukan cuma pindaan prosedur semata-mata. Dalam konteks itu, hanya sekiranya pindaan tersebut merampas hak-hak itu H menerusi pindaan prosedur — melainkan ia memperuntukkan demikian secara spesifik — hak sedemikian tidak boleh dirampas tetapi tidak sebaliknya. Oleh itu, s 30 Akta Tafsiran 1967 tidak memberikan perayu-perayu hak untuk menuntut manfaat-manfaat yang tidak disediakan kepada mereka di bawah undang-undang pada masa itu (lihat ms 215C, 216A–H dan 217A–C); *PP v Dato' Hj* I *Harun bin Hj Idris* [1977] 1 MLJ 14, *Nylex (M) Sdn Bhd v Alias bin Chek* [1985] 1 CLJ 185, *Rajaretnam a/l Palaniandy v Amalgamated Properties & Industries* [1988] 2 MLJ 383 dan *Indo Malaysia Engineering Co Bhd v Muniandy Regasamy & Ors* [1990] 3 MLJ 301 diikut.]

Notes

For cases on termination benefits, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 782–787.

Cases referred to

Indo Malaysia Engineering Co Bhd v Muniandy Regasamy & Ors [1990] 3 MLJ 301 (folld)
Nylex (M) Sdn Bhd v Alias bin Chek [1985] 1 CLJ 185 (folld)
PP v Datuk Hj Harun bin Hj Idris [1977] 1 MLJ 14 (folld)
Rajaretnam all Palaniandy v Amalgamated Properties & Industries [1988] 2 MLJ 383 (folld)

Legislation referred to

Employment Act 1955 ss 70(c), 77(1)
Employment (Termination and Lay-Off Benefits) Regulations 1980 regs 3, 13
Interpretation Act 1967 s 30(1)(b)

Appeal from: Saman Pesuruhjaya Buruh 92 of 1986

RA Kumar (*Nijat, Kumar, Netto & Partners*) for the appellants.
Arthur Lee (*Arthur Lee & Co*) for the respondents.

Abdul Kadir Musa J: This is an appeal by Jaafar bin Jantan and 227 others ('the appellants'), represented by En RA Kumar, under s 77(1) of the Employment Act 1955 ('the 1955 Act') arising from the dissatisfaction of the decision of the Director-General of Labour dated 17 May 1996. It was a decision made under s 70(c) of the 1955 Act, whereby the appellants' claims for: (i) 'indemnity in lieu of notice'; and (ii) 'termination benefits' were dismissed. They were dismissed based on *two* preliminary objections raised by En Arthur Lee, learned counsel for Golden Lady (M) Sdn Bhd ('the respondent'), vide his letter dated 25 October 1995 exhibited at p 23 of the record of appeal (encl 6). In order to appreciate *why* those objections were raised, I have *no* alternative *but* to briefly give the chronology of events leading to the appellants *filing afresh* those *two* same claims *after* the (then) Supreme Court dismissed their original claims filed in the Labour Court in or about 1986 *on* 15 February 1993.

The two objections raised by En Arthur Lee — referred to above — are the same objections raised by him before me in this appeal. In that respect, it was his contention that:

(i) since those two claims filed in 1986 were decided and disposed of both by the High Court (on 28 February 1991) and the (then) Supreme Court (on 15 February 1993), they *could not* be raised again between the same parties on the principle of res judicata; and

(ii) since those two aforesaid claims were decided *on* the relevant law *then* applicable in 1986 *and* it was held that *by* that law the Labour Court *then* had *no* jurisdiction to entertain them in 1986, it could not

A therefore be said to have the necessary jurisdiction *after* 15 February 1993, *unless* the 1955 Act specifically so provides otherwise. Encik Kumar, on the other hand, canvassed otherwise.

Briefly, the appellants were the employees of the respondents whose factory was burnt down on 2 July 1985. The effect was that the appellants B were laid off by the respondents. As a result of that lay-off, the appellants filed their claims for:

(a) 'indemnity in lieu of notice';

(b) 'termination benefits'; and

C (c) 'annual leave pay'.

In the Labour Court sometime in March 1986, it was heard on 1 September 1986 by a labour officer who ruled in favour of the appellants. The respondent appealed against that decision in the High Court at Johor Bahru on 11 September 1986.

D At the hearing of the appeal in the High Court, the respondent contended as a preliminary issue that the Labour Officer had no jurisdiction under s 69(1) of the *then* 1955 Act to award the appellant's claims in respect of:

(i) 'indemnity in lieu of notice'; and

E (ii) 'termination benefits'.

His Lordship Richard Talalla JC (as he then was), in allowing the said objections, held that those *two* claims aforesaid did not constitute wages within the meaning of the 1955 Act and therefore by reference to s 69(1) of the said Act and the Labour Court in making those awards in favour of F the appellant would amount to acting outside its jurisdiction. The appellants appealed to the Supreme Court against that High Court decision.

On appeal, the Supreme Court on 15 February 1993 dismissed the appeal. Consequential to that decision, the sealed order of that decision was extracted. That sealed order was exhibited at pp 55 and 56 of encl 6, G whereby at para (4) of the said order it states:

> *Dan Adalah Juga Diperintahkan* bahawa perayu diberi kebebasan untuk meneruskan tuntutan mereka di bawah s 69 Akta Pekerjaan di Mahkamah Buruh.

According to En Kumar, on the basis of the wording of the aforesaid H para (4) *and* the relevant extracts of the 'notes of proceedings' of the Supreme Court (pp 36 and 37 of encl 6), it was his strong contention that his clients were and are entitled to file afresh those two same claims in the Labour Court after 15 February 1993.

For easy perusal and reference, the relevant extracts mentioned I above are as follows:

> However, we feel that there was a vested right in view of s 60[J] (sic) of the Act and reg 13 and that A (appellant) should therefore be at liberty to pursue a remedy at the Labour Court (per Hamid Omar LP, quoted at p 36, encl 6).

In the same page of encl 6, Edgar Joseph Jr SCJ said: A

> However, we feel appellants had had a vested right under s 60J of the Act and reg 13, and therefore appellant is at liberty to pursue his remedy in Labour Court.

Lastly, at p 37 of the same enclosure, En Kumar quoted Wan Yahaya SCJ (as he then was) as saying: B

> However, we feel that there is still an option open and in view of s 60J and reg 13, applicant should therefore be at liberty to pursue at labour court.

Based on the above, it was thus submitted by En Kumar that since his clients were held to have vested rights to those two claims under s 60J of the 1955 Act and reg 13 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 ('the 1980 Regulations'), they were therefore entitled to file the same claims afresh *after* 15 February 1993. For that purpose, it was his contention that the Labour Court has the necessary jurisdiction to hear and decide on those claims by virtue of s 60J of the 1955 Act *and* in accordance with the procedure provided for by reg 13 of the 1980 Regulations. In that context and in essence, he submitted that if at all there was any defect with his clients' original claim of March 1986, it should not affect their vested right. C D

To support his contention, he relied on and quoted what was stated by Raja Azlan Shah FJ (as he then was) in the case of *PP v Datuk Hj Harun bin Hj Idris* [1977] 1 MLJ 14, whereby his Lordship said as follows (at the same page): E

> An amending statute which is purely procedural is to be construed as *retrospective* in its operation, *unless* a contrary intention appears. (Emphasis added.)

It was thus his submission in that context that the amendment to s 69 has a retrospective effect, *and* there was *no* contrary intention appearing thereto, which therefore falls squarely within what was opined by his Lordship in *Datuk Hj Harun*'s case. F

From En Kumar's submission, it is my inference that he must have relied on the implication of reg 13 of the 1980 Regulations. The said reg 13 states: G

> Any dispute between an employee and his employer in respect of any payment payable under any provisions of these Regulations may be dealt with under the provisions of Part XV of the Act.

The general provisions dealing with the entitlement of employees to the 'termination benefits' or the 'lay-off benefits' can be found in reg 3 of the 1980 Regulations. Since by the time the appellants filed afresh their claims in 1986, the 1980 Regulations was then already available, it must have propelled En Kumar to advance the above submission as discussed earlier. As a further enhancement to his earlier submission, he also quoted and relied on s 30(1)(b) of the Interpretation Act 1967 ('the 1967 Act') which states as follows: H I

> 30(1) The repeal of a written law in whole or in part shall not —

A ...

(b) affect any right ... under the repealed law; or ...

... as if the repealing law had not been made.

While it was not disputed by En Arthur Lee, it is established law that if a person's right is procedural in nature, such right is not affected by amending B law as provided by s 30(1)(b) quoted above. However, it is his contention that those two claims were *substantive* claims and *not* a defect in procedural requirement. That being the situation, I am forced to examine further the contents and the impact of s 69(1) before and after 10 February 1989 vide the Employment (Amendment) Act 1989 ('Act A716'). It is perhaps most appropriate for me at this juncture to point out that claims made by the C appellants can be dealt with by virtue of reg 13 of the 1980 Regulations in accordance with the procedure provided by s 69(1) of the 1955 Act.

Section 69(1) *before* amendment provides, inter alia, as follows:

> The Director-General may inquire into and decide *any dispute* between an D employee and his employer ... *to pay any wages due to such employee* where *such dispute arises* out of any term in the contract of service between such employee and his employer ... and in pursuance of such decision make an order ... for the payment by either party of such *sum of money* as he deems just without limitation of the amount thereof. (Emphasis added.)

The pre-amended s 69(1) was considered in a number of cases.

E In the case of *Nylex (M) Sdn Bhd v Alias bin Chek* [1985] 1 CLJ 185, by virtue of s 77 of the 1955 Act, the pre-amended s 69(1) was interpreted by the High Court as a result of a dispute as to the employee's right to claim 'indemnity in lieu of notice' and 'termination benefits' flowing from his dismissal by his employer for alleged misconduct. It was contended by F the employee that he was entitled to claim those benefits on the authority of the said s 69(1). To that, the Assistant Director of Labour, Klang held that he had the necessary power to enquire into and decide any dispute between an employee and his employer arising out of any terms of the contract of service or out of the provisions of the 1955 Act or any regulation G made thereunder. It is obvious '*the provision*' he was referring to was the pre-amended s 69(1) of the 1955 Act and the relevant '*regulation made thereunder*' must necessarily be reg 13 of the 1980 Regulations which provides the vehicle as to how any disputed claim between an employee and his employer should be brought about.

H On appeal under s 77 of the Act *by* the employer, it was held by Harun Hashim J (as he then was) that:

> *The power of the Director General (including the Assistant Director) under s 69 is limited to matters concerning wages only.* The words 'any dispute' in the section must be read conjunctively with the words 'to pay any wages due'. (Emphasis added.)

I

His Lordship's decision was fully endorsed by the (then) Supreme Court in the case *Rajaretnam a/l Palaniandy v Amalgamated Properties & Industries* [1988] 2 MLJ 383. In that case, it was thus held as follows:

> ... s 69(1) of the Employment Act 1955 does not give any power to the Director-General or Labour Officer of the Ministry of Labour to question the validity of the dismissal of employee by his employer.

It follows therefore that *not* being able 'to question the validity of the dismissal of employee by his employer' must necessarily be construed as not being able 'to enquire into and decide' any entitlement, if any, consequential to such dismissal. In other words, the Director-General of Labour or any of his designated officers has *no* jurisdiction to hear and decide on the issues of the employee's entitlements under s 69(1) which were identical to those claimed by the appellants in the case before me.

In *Rajaretnam*'s case, Seah SCJ (as he then was) in delivering the judgment of the court said the following:

> In our opinion, s 69(1) [of the 1955 Act] had been considered and judicially interpreted by Harun J in the case of [*Nylex*] where the learned judge appeared to have construed the phrase 'any dispute' in a restricted sense as that suggested by Mr Nagarajah. This appeal was in effect an attempt by Mr Karam Singh to try to persuade this court to overturn the decision of Harun J in *Nylex*'s case. We have read the reasons given by the learned judge in his judgement for adopting such a course and with respect, we are in agreement with him [*on the question of the effect and impact of the pre-amended s 69(1) of the 1955 Act*] ... . (Emphasis added.)

From the above discussion, it clearly demonstrates that s 69(1), before it was amended by Act A716, speaks *only* of any dispute as to the payment of any wages due to any dismissal or 'retrenchment' of an employee and *not* to other benefits such as claimed by the appellants in the case before me. Even after the amendment by *s 2* of the 1955 Act, the definition of 'wages' under para (b) defines it as 'basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service, but does not include ...': (i) 'termination benefit'; and (ii) 'lay-off benefit'. It must have been due to that intention of the legislature that has culminated in Richard Tallala JC (as he then was) concluding that 'indemnity in lieu of notice' and 'termination benefit' 'do not constitute wages within the meaning of the Act and therefore by reference to s 69(1) of the Act were not matters available for the Director-General to decide and make an order on', which was upheld by the Supreme Court as earlier pointed out. Prior to that, the same court, in the case of *Indo Malaysia Engineering Co Bhd v Muniandy Regasamy & Ors* [1990] 3 MLJ 301, was also of the same view when it held that, such benefit did not come within the ambit of the definition of 'wages' in the context of the 1955 Act. At p 304 of *Indo Malaysia*'s case, it was held that:

> The payment of termination benefit is covered by reg 4(1) of [the 1980 Regulations] made under s 60J of [the 1955 Act]. Indemnity in lieu of notice is paid on the authority of s 13(1) of [the 1980 Act]. Having regard to the definition of wages in [the 1955 Act], *none* of these payments comes within the ambit of that definition

to which I fully adopt. From the brief facts of the case (at pp 302 and 303), the above decision was certainly based on the pre-amended s 69(1) of the 1955 Act.

However, by later amendment to the 1955 Act, 'termination benefit' (s 60J(1)(a)) and 'lay-off benefits' (s 60J(1)(b)) must have been included to s 60J. Before that, such benefits were *not* available to appellants. Thus, it is my considered opinion that that amendment affects the 'substantive rights' of the parties concerned and *not* just pure procedural amendment. In that context, only if the said amendment took away those rights by way of procedural amendment then, *unless* it specifically provides so, such rights *cannot* be taken away, *but* not otherwise as in the present case. Hence s 30, in my considered view in the circumstances of this case, does not give the appellants the right to claim those benefits which, *by law then*, were *not* substantively available to them. In that context, I rejected En Kumar's submission in preference to what was submitted by En Arthur Lee.

On the premises above, and since En Kumar did not really pursue the question of res judicata in his submission, there is no necessity for me to discuss the effect of the same further since it will be futile for me to do so. That being so and in conclusion, I hold that his clients are *not* entitled to bring a fresh claim for those benefits which, *at the material time*, were *not* available to them. As such this appeal is hereby dismissed with costs.

Appeal dismissed.

Reported by Hanim Kamaruddin